

MEMORANDUM
MONROE COUNTY PLANNING DEPARTMENT
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TO: Planning Commission

FROM: Clarence Feagin, Ph.D., AICP, Senior Planner **CF**

RE: Request for approval of an amendment to a major conditional use to redevelop the Scotty's hardware store with a Walgreens pharmacy

DATE: October 3, 2006

MEETING DATE: October 11, 2006

Background

1. On June 10, 2003 the Development Review Committee (DRC) passed a Resolution (NO. D16-03) recommending that the Planning Commission approve with six (6) conditions the redevelopment of the Scotty's hardware store with a Walgreens pharmacy.
2. A Planning Department staff report prepared by Aref Joulani, Senior Administrator of Policy and Planning, was presented to the Planning Commission on June 11, 2003 recommending approval with the six (6) conditions noted in DRC Resolution NO. D16-03 for the redevelopment of the Scotty's hardware store with a Walgreens pharmacy.
3. This application for conditional use was heard by the Planning Commission on June 11, 2003.
4. At the conclusion of the hearing held on June 11, 2003 the Planning Commission voted to deny the application based on 7 findings of fact and conclusion of law set forth in Resolution No. P36-03.
5. The Applicant filed a timely appeal of Resolution P36-03 to the division of administrative hearings (DOAH).

6. As a result of the appeal to DOAH, only one of the findings of fact for the denial of the application was upheld with the remaining being determined to be invalid.
7. The applicant filed a timely petition for writ of certiorari in the Circuit Court of the 16th Judicial Circuit challenging the one remaining finding of fact and conclusion of law which served as the basis for denying its conditional use application.
8. The avoid further litigation appellant and the County worked toward a settlement agreement, and in January of 2006 the Monroe County Board of County Commissioners (BOCC) gave conceptual approval for this approach.
9. In September of 2005 the BOCC directed legal staff to explore a mediated settlement.
11. As a result of a mediated settlement agreement in Walgreens & Gadinsky v. Monroe County and Florida Keys Citizen's Coalition (Intervenors), Judge Richard G. Payne of the Circuit Court of the Sixteenth Judicial Circuit of Florida has instructed The Monroe County Growth Management Division to issue Walgreen's Company a Conditional Use Development Order approving the Major Conditional Use Application filed by Scotty's Inc., to demolish an existing Scotty's hardware store on Big Pine Key and construct in its place a 6,510 square foot Walgreen's pharmacy with drive-through pharmacy window, with the conditions stipulated in the mediated Settlement Agreement (CASE NO. 44-2005-CA-266-K).
12. At a meeting held on April 19, 2006 the BOCC approved the mediated Settlement Agreement in Walgreens & Gadinsky v. Monroe County and Florida Keys Citizen's Coalition (CASE NO. 44-2005-CA-266-K).
13. On May 16, 2006 the BOCC and other signatoriess executed the mediated Settlement Agreement in Walgreens & Gadinsky v. Monroe County and Florida Keys Citizen's Coalition (CASE NO. 44-2005-CA-266-K).

Recommendation

Staff is recommending approval of the request filed on April 14, 2003 by Scottys Inc. for an amendment to a major conditional use for a commercial retail establishment at the above described location, in order to redevelop the existing Scotty's hardware store into a 16,510 square foot Walgreens pharmacy with a

drive-through window. The following thirteen (13) conditions stipulated in the mediated settlement agreement (CASE NO. 44-2005-CA-266-K) shall be attached to the conditional use permit:

The first six (6) conditions were originally provided in DRC Resolution NO. D16-03 and the Planning Department staff report prepared on May 29, 2003 for presentation to the Planning Commission held on June 11, 3002;

Condition 1

Prior to the issuance of a Certificate of Occupancy, signs shall be posted on the access driveways from Key Deer Boulevard and US Highway 1 that limit the access of delivery vehicles only through the Key Deer Boulevard driveway.

Condition 2

Prior to issuance of a building permit, the transplantation plan must be revised to delete the removal of two threatened Paurotis Palms.

Condition 3

Prior to issuance of a building permit, the surface water management plan shall be approved by the South Florida Water Management District.

Condition 4

Prior to issuance of a building permit, the Florida Department of Health shall approve the Wastewater Treatment Plan.

Condition 5

Prior to issuance of a building permit, a Fire Protection Plan shall be approved by the Monroe County Fire Marshall.

Condition 6

The Keys Energy Services (KEYS) shall determine load requirement based on the review of a complete set of plans and approval shall be received prior to issuance of a building permit.

The following seven (7) conditions were established as a result of mediation;

Condition 1

The architectural standards adopted for Big Pine Key shall be incorporated into the building design in collaboration with and subject to the approval Monroe County Director of Planning.

Condition 2

The onsite traffic pattern, including the addition of a perimeter road and integrated bike path, shall be reconfigured as depicted on the site plan attached hereto and made a part hereof (Site Plan Sheet A1.01 prepared by Angel C.

Saqui, FAIA, not dated, signed or sealed) . To the extent Monroe County deems it appropriate to do so, all or part of the perimeter road and/or integrated bike path may be eliminated in order to accommodate placement of the waste water treatment facility referred to in Condition 7 below.

Condition 3

The property owner shall be prohibited from applying for an alcoholic beverage permit for a period of two (2) years commencing from the date of issuance of the Conditional Use Development Order.

Condition 4

The freestanding sign shall be reduced in size so as to be no larger than the CVS pharmacy freestanding sign.

Condition 5

Only native vegetation, as approved by the County Biologist, shall be utilized in the landscape buffers.

Condition 6

Only cutoff lighting shall be utilized and located so as to prevent spillover onto neighboring residential uses.

Condition 7

If desired by Monroe County, the area to the rear of the pharmacy between the designated employee parking and Northerly property line may be utilized by Monroe County or its designee to construct a sewage treatment facility, the construction, operation and maintenance of which shall be at no cost to Walgreen's. In the event Monroe County does not elect to construct a sewage treatment facility on this site, Walgreen's shall plant a buffer, 30 foot deep, of native vegetation between the Northerly boundary and the designated employee parking.

Attachments:

1. June 10, 2003 Resolution by the Development Review Committee recommending approval.
2. May 29, 2003 Staff Report to June 11, 2003 meeting of the Planning Commission recommending approval.
3. Settlement Agreement approved by BOCC on April 19, 2006 and executed on May 16, 2006 mandating issuance to Walgreens Company a Conditional Use Development Order for the Major Conditional Use filed by Scotty's Inc., to demolish an existing 25,921 square foot Scotty's hardware store building on Big Pine Key and construct in its place a 16,510 square

foot Walgreen's pharmacy with drive-through pharmacy window, with the conditions stipulated in the mediated Settlement Agreement (CASE NO. 44-2005-CA-266-K)



RESOLUTION P42-06

A RESOLUTION APPROVING AN AMENDMENT TO A MAJOR CONDITIONAL USE REQUEST BY WALGREENS COMPANY AND GADINSKY REAL ESTATE, LLC FOR COMMERCIAL RETAIL USE OF LAND AND BUILDINGS BY REPLACING THE EXISTING 26,000 SQUARE FOOT SCOTTY'S HARDWARE STORE BUILDING WITH A 16,510 SQUARE FOOT WALGREENS PHARMACY WITH A DRIVE-THROUGH PHARMACY WINDOW. THE PROPERTY IS LOCATED AT 30351 OVERSEAS HIGHWAY ON BIG PINE KEY NEAR MILE MARKER 30, HAVING REAL ESTATE NUMBER 00111690-000900.

WHEREAS, the Planning Commission has made the following findings of fact and conclusions of law:

1. On June 10, 2003 the Development Review Committee (DRC) passed a Resolution (NO. D16-03) recommending that the Planning Commission approve with six (6) conditions the redevelopment of the Scotty's hardware store with a Walgreens pharmacy.
2. A Planning Department staff report prepared by Aref Joulani, Senior Administrator of Policy and Planning, was presented to the Planning Commission on June 11, 2003 recommending approval with the six (6) conditions noted in DRC Resolution NO. D16-03 for the redevelopment of the Scotty's hardware store with a Walgreens pharmacy.
3. This application for conditional use was heard by the Planning Commission on June 11, 2003.
4. At the conclusion of the hearing held on June 11, 2003 the Planning Commission voted to deny the application based on 7 findings of fact and conclusion of law set forth in Resolution No. P36-03.
5. The Applicant filed a timely appeal of Resolution P36-03 to the division of administrative hearings (DOAH).
6. As a result of the appeal to DOAH, only one of the findings of fact for the denial of the application was upheld with the remaining being determined to be invalid.

7. The applicant filed a timely petition for writ of certiorari in the Circuit Court of the 16th Judicial Circuit challenging the one remaining finding of fact and conclusion of law which served as the basis for denying its conditional use application.
8. The avoid further litigation appellant and the County worked toward a settlement agreement, and in January of 2006 the Monroe County Board of County Commissioners (BOCC) gave conceptual approval for this approach.
9. In September of 2005 the BOCC directed legal staff to explore a mediated settlement.
11. As a result of a mediated settlement agreement in Walgreens & Gadinsky v. Monroe County and Florida Keys Citizen's Coalition (Intervenors), Judge Richard G. Payne of the Circuit Court of the Sixteenth Judicial Circuit of Florida has instructed The Monroe County Growth Management Division to issue Walgreen's Company a Conditional Use Development Order approving the Major Conditional Use Application filed by Scotty's Inc., to demolish an existing Scotty's hardware store on Big Pine Key and construct in its place a 6,510 square foot Walgreen's pharmacy with drive-through pharmacy window, with the conditions stipulated in the mediated Settlement Agreement (CASE NO. 44-2005-CA-266-K), and
12. At a meeting held on April 19, 2006 the BOCC approved the mediated Settlement Agreement in Walgreens & Gadinsky v. Monroe County and Florida Keys Citizen's Coalition (CASE NO. 44-2005-CA-266-K).
13. On May 16, 2006 the BOCC and other signatories executed the mediated Settlement Agreement in Walgreens & Gadinsky v. Monroe County and Florida Keys Citizen's Coalition (CASE NO. 44-2005-CA-266-K).

NOW THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF MONROE COUNTY, FLORIDA, that the preceding Findings of Fact and Conclusions of Law support its decision to grant **APPROVAL** to Walgreens Company and Gadinsky Real Estate, LLC for commercial retail use of land and buildings at the above described location by replacing the existing 26,000 square foot Scotty's hardware store building with a 16,510 square foot Walgreens pharmacy with a drive-through pharmacy window, **WITH THE FOLLOWING CONDITIONS** that were stipulated in the settlement agreement attached to the conditional use permit:

The first six (6) conditions were originally provided in DRC Resolution NO. D16-03 and the Planning Department staff report prepared on May 29, 2003 for presentation to the Planning Commission held on June 11, 3002;

Condition 1

Walgreens Settlement

Initials _____

Prior to the issuance of a Certificate of Occupancy, signs shall be posted on the access driveways from Key Deer Boulevard and US Highway 1 that limit the access of delivery vehicles only through the Key Deer Boulevard driveway.

Condition 2

Prior to issuance of a building permit, the transplantaion plan must be revised to delete the removal of two threatened Paurotis Palms.

Condition 3

Prior to issuance of a building permit, the surface water management plan shall be approved by the South Florida Water Management District.

Condition 4

Prior to issuance of a building permit, the Florida Department of Health shall approve the Wastewater Treatment Plan.

Condition 5

Prior to issuance of a building permit, a Fire Protection Plan shall be approved by the Monroe County Fire Marshall.

Condition 6

The Keys Energy Services (KEYS) shall determine load requirement based on the review of a complete set of plans and approval shall be received prior to issuance of a building permit.

The following seven (7) conditions were established as a result of mediation;

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The architectural standards adopted for Big Pine Key shall be incorporated into the building design in collaboration with and subject to the approval Monroe County Director of Planning.

Condition 2

The onsite traffic pattern, including the addition of a perimeter road and integrated bike path, shall be reconfigured as depicted on the site plan attached hereto and made a part hereof (Site Plan Sheet A1.01 prepared by Angel C. Saqui, FAIA, not dated, signed or sealed) . To the extent Monroe County deems it appropriate to do so, all or part of the perimeter road and/or integrated bike path may be eliminated in order to accommodate placement of the waste water treatment facility referred to in Condition 7 below.

Condition 3

The property owner shall be prohibited from applying for an alcoholic beverage permit for a period of two (2) years commencing from the date of issuance of the Conditional Use Development Order.

Condition 4

The freestanding sign shall be reduced in size so as to be no larger than the CVS pharmacy freestanding sign.

Condition 5

Only native vegetation, as approved by the County Biologist, shall be utilized in the landscape buffers.

Condition 6

Only cutoff lighting shall be utilized and located so as to prevent spillover onto neighboring residential uses.

Condition 7

If desired by Monroe County, the area to the rear of the pharmacy between the designated employee parking and Northerly property line may be utilized by Monroe County or its designee to construct a sewage treatment facility, the construction, operation and maintenance of which shall be at no cost to Walgreen's. In the event Monroe County does not elect to construct a sewage treatment facility on this site, Walgreen's shall plant a buffer, 30 foot deep, of native vegetation between the Northerly boundary and the designated employee parking.

PASSED AND ADOPTED by the Planning Commission of Monroe County, Florida at a regular meeting held on the ____ day of _____, 2006.

| | |
|----------------------------------|-------|
| Chair James D. Cameron | _____ |
| Vice-Chair Randy Wall | _____ |
| Commissioner Sherry Popham | _____ |
| Commissioner Michelle Cates Deal | _____ |
| Commissioner Donna Windle | _____ |

PLANNING COMMISSION OF
MONROE COUNTY, FLORIDA

BY _____
James D. Cameron, Chair

Signed _____ day of _____, 2006.